

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013071136

ORDER GRANTING DISTRICT'S
MOTION TO DISMISS CLAIMS
OUTSIDE OF OAH'S JURISDICTION

On July 25, 2013, Parents on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint), naming the Newport-Mesa Unified School District (District) as respondent.

Student's complaint contains two issues. Issue one alleges that the District violated the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title 42 of the United States Code section 1983 (Section 1983) by denying Student a free appropriate public education (FAPE) when the District's assessments failed to result in appropriate goals and services in Student's Individualized Education Program (IEP). Student's issue two alleges that the District violated the IDEA and Sections 504 and 1983 by failing to develop a comprehensive and appropriate IEP.

On August 5, 2013, the District filed a Motion for Partial Dismissal, alleging that OAH is without jurisdiction to hear claims based on Section 504 and Section 1983.

OAH received no response to the District's motion.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child;

or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) Thus, OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) or Section 1983 of Title 42 of the United States Code.

ORDER

The District's Motion to Dismiss all claims made pursuant to Section 504 of the Rehabilitation Act of 1973, Section 1983 of Title 42 of the United States Code is GRANTED. All such claims are hereby dismissed. The matter will proceed as scheduled against the remaining claims in the complaint.

IT IS SO ORDERED.

Dated: August 15, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings